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AUTHOR LeDuc, Don R., Ed.; Krasnow, Erwin G., Ed.
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ABSTRACT

This issue of CLIENT (Communication Law Information: Edited Notes by Topic) contains the following features: a recent listing of topics related to telecommunications studies in legal journals; an article by Stuart Brotman on financial self-sufficiency for the public interest communication law movement; a selected annotated bibliography of 1974-75 cable television and satellite articles; a description of how to use the Pike and Fisher Radio Regulations series; and a humorous commentary concerning the demise of the Fairness Doctrine. (TS)

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Vol. 3, No. 1 Autumn 1975

Communication Law Information: Edited Notes by Topic

CLIENT

Department of Communication Arts
Vilas Hall
Un. of Wisconsin
Madison, Wisconsin
53706

Don R. Le Duc and Erwin G. Krasnow, Editors

FEEDBACK

Thanks to each of you who took the time to complete the questionnaire contained in the Spring issue of CLIENT. Your suggestions were helpful and those who offered to write comments on particular communication law topics will be contacted shortly. We appreciate the excellent response--more than 30 questionnaires returned--but please don't wait for another form if you have any ideas for improving this service at any time. (If any of you missed it, the questionnaire is at page 18 of the Spring issue.)

FEATURES IN THIS ISSUE

Since most of the responses indicated a particular interest in legal annotations, we've included an up-date of the law review topic locator contained in the Spring issue to make this bibliography current through Summer 1975. In addition, we're running an annotated bibliography of a number of recent law journal studies of cable and satellite regulation, as well as an original article on the financial difficulties being encountered by public interest law firms. Finally, in response to some specific requests, there's a short "how-to-do-it" summary of how Pike & Fisher's Radio Regulations can be made to yield its information most effectively.

FUTURE FEATURES IN CLIENT

Attny. Howard Liberman (Cohn and Marks) with "Cable Research in A Nutshell," a guide to finding all significant judicial and FCC cable decisions and Inside the Freedom of Information Act, a guide for using new discovery rules for research.

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Through the joint support of the Work Study Program and the Department of Communication Arts, University of Wisconsin, Michael Angst, an honors student and communications major, was appointed to conduct research for CLIENT this summer. Among his projects were the communications law topic locator below and the cable communication and satellite study annotation found later in this issue.

TELECOMMUNICATIONS STUDIES IN LEGAL JOURNALS

by Michael R. Angst

(A continuation of the topic locator in Vol. 2, #7, CLIENT through Summer 1975)

TOPICS	IN ARTICLES NUMBERED
ACCESS TO MEDIA:	11, 12, 17, 19, 20, 21, 22, 24, 25
BROADCAST INDUSTRY:	1, 2, 3, 5, 13, 14, 17, 18, 19, 21, 23, 24, 25, 29, 30
CABLE TV (General):	4, 5, 6, 7, 15, 16, 20, 26, 27, 28, 31
a. Local State Regulatory:	5, 6, 7, 26, 28, 31
b. Copyright:	4, 5, 15, 16, 20, 27
CANADIAN BROADCASTING:	None
CENSORSHIP:	18, 21, 25
CITIZEN CHALLENGES:	10
COMMUNICATIONS ACT OF 1934:	1, 2, 3, 8, 11, 12, 17, 19, 20, 22
CONTENT CONTROL:	3, 10, 19, 21, 22, 23, 25, 26, 29
COMPETITION:	10, 13, 14, 32, 33
COPYRIGHT (Non-Cable)	13, 14
DEFAMATION:	19
ENVIRONMENTAL ISSUES:	22
EQUAL TIME:	None
FAIRNESS DOCTRINE:	11, 12, 17, 19, 20, 22, 24
FEDERAL COMMUNICATIONS COMMISSION:	1, 2, 3, 8, 10, 17, 22, 23, 31
FREQUENCY ALLOCATION:	8

HISTORICAL STUDIES:	None
INFORMATIONAL (Computers):	None
**LABOR:	29
LICENSING:	1, 2, 3, 8, 9, 10
MULTI-MEDIA OWNERSHIP:	None
NEWS PROGRAMMING:	11, 17, 19, 23, 24
OBSCENITY:	18
PAY TELEVISION:	None
POLITICAL BROADCASTING:	None
PRIVACY:	None
PUBLIC BROADCASTING (Educational):	21
RELIGIOUS BROADCASTING:	None
RESEARCH METHODS:	9
SATELLITE COMMUNICATIONS:	13, 14

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1. Administrative law--constitutional law--racial characteristics of license applicants considered in comparative broadcast hearings. Suffolk U L Fall '74, p. 225.

2. Administrative law--hearings before the Federal Communications Commission--fact that applicant for TV license had Blacks on its board of directors must be considered and accorded a comparative merit by the Commission. Catholic U L Fall '74, p. 135.

3. Administrative law--radio and television--communications--minority ownership likely to increase diversity of content must be accorded merit in FCC licensing hearing. U Cin L Rev 1974, p. 669.

4. Cable copyright communications: controversy, Clev St L R Winter '75, p. 107.

5. Cable television and copyright: can the states protect the broadcasters? Wash & Lee L Rev Winter '75, p. 163.

6. Cable-TV franchising and the local bar association: a tailor-made public service activity for the state's local bar asociations. D. R. Le Duc, Wis B Bull '74, p. 38.

7. Cable television: to what extent may the state regulate? R. L. Kohn, LAB Bull Oct. 74, p. 513.

8. Chaos on the citizens band--regulatory solutions for spectrum pollution. Hastings L J Jan. 75, p. 797.

9. Communications law. H. Geller, Geo. L J O 74, p. 39.

10. Communications law--License renewal challenges. Regulation of programming. J. S. Boros. Ann Survey Am L 1973/74 Summer '74, p. 597.

11. Constitutional law--the application of the fairness doctrine to editorial advertising. Wake Forest L Rev O '74, p. 621.

12. Constitutional law: a first amendment right of access--denied. Washburn L J Summer '74, p. 518.

13. Convention relating to the distribution of programme-carrying signals transmitted by satellite. G. Straschnov. Bull Cr Soc Ag '74, p. 369.

14. Convention relating to the distribution of programme-carrying signals transmitted by satellite: a potshot at poaching. NYU J Int L & Politics Winter '74, p. 575.

15. Copyright law and cable television. Ohio S L J '74, p. 974.

16. Copyright status of imported television signals for cable television. De Paul L Rev Fall '74, p. 196.

17. Enforcing the obligation to present controversial issues: the forgotten half of the fairness doctrine. Harv Civil Rights L Rev Winter '75, p. 137.

18. F.T.C. guide banning TV ads that entice children: soft decision or assertive policy? Capital U L Rev '75, p. 109.

19. Fairness doctrine: a double standard for electronic and print media. R. L. Barrow. Hastings L J Ja '75, p. 659.

20. Fairness doctrine and cable TV. S. J. Simmons, Harv J Legis Je '74, p. 629.

21. First amendment and the state as editor: implications for public broadcasting. W. C. Canby, jr. Tex L Rev Ag '74, p. 1123.

22. Friends of the Earth v. FCC: environmentally oriented fairness doctrine complaints. Environmental Law Fall '74, p. 159.

23. Judicial review of FCC program diversity regulation. Colum L Rev Mr '75, p. 401.

24. Media access and the first amendment's romantic tradition: a commentary on Jerome A. Barron. Freedom of the press for whom? M. W. Loper, Maine L Rev '74, p. 415.

25. Musical expression and first amendment considerations. De Paul L Rev Fall '74, p. 143.

26. OTP cable proposals: an end to regulatory myopia. Catholic U L Rev Fall '74, p. 91.

27. Overview of Teleprompter v. CBS (94 Sup Ct 1129) and other recent developments--ominous signals for the copyright law. R. Dannay. Bull Cr Soc O '74, p. 10.

28. Proposed cable communications act of 1975: a recommendation for comprehensive regulation. Duke L J Mr '75, p. 93.

29. Radio and television directors as supervisors--can they vote for union representation? A. S. Gordon. Performing Arts Rev Spring-Summer '73, p. 3.

30. Television for the poor. J. Oppenhein. Clearinghouse Rev Ja '75 (Supp), p. 698.

31. Whose intent? A study of administrative preemption: state regulation of cable television. M. I. Wallach. Case W Res L Rev Winter '75, p. 258.

32. Economic inquiry and the public interest. F. J. Kahn, Fed Com B J (1969), p. 182.

33. Regulation of intramedium "Economic Inquiry by the FCC," F. J. Kahn, Journ of Broad (1969), p. 97.

During the past few months several readers have written requesting information about the activities of the "public interest" law firms which attracted so much attention in the recent past. The following report, written especially for CLIENT, points out one major reason for the lower profile of these firms since the end of 1970. It has been adapted from the author's Masters thesis, "The Development of the Public Interest Communications Law Movement, 1965-1975" recently completed in the Department of Communication Arts, University of Wisconsin. Mr. Brotman is now a law student at the University of California at Berkeley.

FINANCIAL SELF-SUFFICIENCY FOR THE PUBLIC INTEREST COMMUNICATION LAW MOVEMENT: THE ROAD AHEAD

by Stuart Brotman

Foundation funds for public interest communications law firms, such as the Citizens Communications Center and the Media Access Project, are being phased out during the next five years. Within this period, such firms will have to find numerous funding mechanisms to create a broad enough financial base to insure their survival.

To date, funding alternatives addressed to the Internal Revenue Service, the courts, and the FCC have received lukewarm or negative responses. The IRS, since 1970, has been wary of the public interest law movement. In October, 1970, the IRS suspended tax-exempt status for public interest law firms, citing the difficulty of relying on a self-determined standard of "public

interest." Furthermore, the IRS reasoned that "not infrequently, opposing sides in a law suit involving substantial private interests claim they are acting in the public interest"; thus, virtually any party could self-proclaim "the public interest" in order to gain the tax-exempt status.[1]

Following a series of hearings, the IRS subsequently reversed that ruling. The IRS, in lifting the suspension of tax-exempt status, accepted the premise that the representation of clients who would otherwise not be represented was, in itself, in the public interest.[2]

However, the ruling did not deal with the issue of allowing public interest law firms to accept fees from citizens groups which were able to afford one. The IRS has consistently held that such a practice would jeopardize the tax-exempt status of the public interest law firms, which in turn would effectively cut off current financial support from foundations.

The Citizens Communication Center (CCC) sought a waiver of this policy in February, 1973. At that time, CCC noted that many of its clients were organizations which had nominal financial resources which they were willing to apply to defray the expenses incurred by CCC's legal representation.[3]

CCC requested that the IRS allow such reasonable compensation without jeopardizing its tax-exempt status. It promised to charge fees only when representing a bona fide community group and when services were rendered primarily to enforce public policy as defined by the Communications Act of 1934. In addition, CCC emphasized that these fee-paying clients would be chosen under the existing tax-exempt public interest law guidelines, and that the groups or individuals represented could not obtain competent legal counsel at the normal minimum fees charged by members of the local bar association.

Further public-interest protective measures were advanced by CCC. It promised its fees would never exceed the actual costs of a case; that they would always be less than the fees of a private law firm; that the fees would not benefit any private individual; that no CCC attorney would engage in any private litigation; and that it would not select its cases based on any potential for financial recoveries.[4]

IRS held that CCC could not charge or accept fees from clients for on behalf of whom legal services are rendered without jeopardizing its tax-exempt status:

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[1]"The Public Interest Law Firm: New Voices for New Constituencies," (New York: The Ford Foundation, 1973), 10. Cf. Theodore L. Garrett, "Federal Tax Limitations on Policital Activities of Public Interest and Educational Organizations," 59 Georgetown Law Journal 561, 575-577 (1971).

[2]"The Public Interest Law Firm: New Voices for New Constituencies," 10.

[3]Letter from Edward Greensfelder, Citizens Communications Center, to J. A. Tedesco, Chief, Exempt Organizations Branch, Internal Revenue Service, February 16, 1973.

[4]Ibid.

> The basis for this charitable recognition of a public interest law firm rests not on the social merits of the particular positions being advocated by the firm but rather on the fact that such an organization provides a facility for the resolution of issues of public importance. Because these cases do not entail any significant economic interest, traditional commercial sources do not provide adequate legal representation for the resolution of such issues ...
>
> We feel that if public interest law firms were allowed to charge or accept fees from clients, the receipt of such fees could well become a significant purpose of the litigation with the consequent erosion of the basis for charitable classification and detriment to the community in terms of the issues or parties selected for representation. This expectance of fee recovery is necessarily inconsistent with charitability in the context of public interest law firms.[5]

While not allowing CCC to develop a conditional hourly fee schedule, the IRS did condede that the firm could be reimbursed for out-of-pocket expenditures for expert witnesses, filing, travel, and similar incidental costs involved in representation.[6]

The financial independence sought by public interest law firms was recently dealt another setback, this time by the U.S. Supreme Court. For several years, the public interest law movement had advanced the idea that, under the theory of "private attorneys general," the public interest lawyer should be able to recover attorney's fees for successful litigation (i.e., the loser would be ordered by the court to reimburse the winner's fees).[7] The D.C. Court of Appeals reinforced that decision by ordering the Alaska Pipeline Service Company to pay the legal fees incurred by The Wilderness Society, The Environmental Defense Fund, and Friends of the Earth, which had successfully challenged the original construction of the Alaskan pipeline on environmental grounds.[8]

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[5]Letter from J. A. Tedesco, Chief, Exempt Organizations Branch, Internal Revenue Service to Citizens Communications Center, October 4, 1974.

[6]Ibid.

[7]During the past few years, six of the eleven circuits of the Court of Appeals endorsed this concept in a series of cases. Since 1971, the Courts of Appeals in these six jurisdictions applied the "private attorneys general" rationale in 13 cases awarding fees to the winner. These cases will be remanded to conform to the recent Supreme Court decision which reversed this reasoning. Warren Weaver Jr., "Public Interest Lawyers Shocked by Supreme Court's Denial of Attorney's Fees to the Winners of Lawsuits," The New York Times, May 18, 1975, 29; Cf. Note, "Attorney's Fees: Where Shall the Ultimate Burden Lie?" 20 Vanderbilt Law Review 1216 (1967); Comment, "Court Awarded Attorneys' Fees and Equal Access to the Courts," 122 University of Pennsylvania Law Review 636 (1974).

[8]"Fee Gloom," Time, May 26, 1975, 42. The Alaskan pipeline victory was subsequently modified by Congressional intervention. Legislation allowing the pipeline's construction was passed, but new environmental safeguards were included as an acknowledgement of the arguments advanced by the intervening public interest groups.

This decision was appealed to the Supreme Court, which reversed the authority of the court to award such fees. According to the New York Times, the decision "sent shock waves through the profession of public interest law."[9] The 5 to 2 vote rejected the "private attorneys general" theory unless specifically authorized by Congress.[10] Thus, at present, the only hope for establishing the authority of the Federal courts to grant attorney's fees to winning parties in public interest cases will rest with future legislation.[11]

Since it has generally been thought that attorney's fees could not be awarded in actions against the federal government or its agencies, the potential for future income through court-ordered awards presently looks bleak.[12]

In the communications area, public interest lawyers have attempted to offset reduced capital with reduced expenses. Specifically, they have sought to have the FCC assume some financial burden for public intervention, or else modify its rules to permit such intervention under economic hardship.

Ernest Gellhorn has argued that the cost barriers of intervention in administrative proceedings are unnecessary and should be eliminated: "If public intervention is in fact a 'right' which agencies have a mandate to foster, failure to render some assistance amounts to a practical subversion of that mandate. With the stakes so high, agencies should pursue a variety of approaches which will reduce the cost of participation at a reasonable price."[13]

The FCC, in part, has begun to respond to such requests. In 1971, it reviewed its rules and reduced the number of copies required for filing.[14] The Commission has also waived its multiple copy rules and provided free copies

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[9]Weaver, op. cit., 29.

[10]Speaking for the majority, Justice Byron White wrote that although "the encouragement of private action to implement public policy has been viewed as desirable in a variety of circumstances," Congress had not "extended any roving authority to the Judiciary to allow counsel fees . . . whenever the courts might deem them warranted." "Fee Gloom," op. cit., 42.

[11]Consumer advocate Ralph Nader has announced plans to urge Congress to introduce such legislation, and Senator John Tunney (Dem.-Cal.) promised that he would introduce such legislation in the near future. Weaver, op. cit., 29; "Fee Gloom," op. cit., 42.

[12]This interpretation is derived from 28 U.S.C., Section 2412 (1970.

[13]Ernest Gellhorn, "Public Participation in Administrative Proceedings," 81 Yale Law Journal 359, 389 (1972); Cf. Roger Cramton, "The Why, Where, and How of Broadened Public Participation in the Administrative Process," 60 Georgetown Law Journal, 525, 529 (1972).

[14]In re Reducing the Number of Copies of Pleadings Filed in Commission Proceedings, 28 FCC 2d 443 (1971).

of transcripts of proceedings to public parties demonstrating an inability to pay for them.[15] However, the FCC has still not set a policy regarding reimbursement for expert witnesses called by public intervenors.[16] This problem has been acute for public interest lawyers who have not had the money available to hire the high-priced experts available to the private interests.[17]

Recently, the Federal Communications Bar Association proposed that the FCC allocate $25,000 for out-of-pocket expenses of broadcasters who were threatened with a loss of license, a forfeiture, or similar legal liability. Concurrently, the FCBA pledged to provide reduced fee or free representation to such parties.[18]

The National Black Media Coalition proposed an alternative legal assistance program for public intervenors. The NBMC plan called for a $25,000 FCC allocation to cover the expenses, including reasonable legal fees, of attorneys representing citizen groups in renewal and/or rule-making proceedings.[19] Although the question of an annual reimbursement budget is still pending, the obvious compromise would increase the budget to $50,000, and divide its appropriations equally between private interest defendants and public interest intervenors.[20]

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[15]For example, see Chicago Federation of Labor and Industrial Union Council (WCFL), 31 RR 2d 1520 (1974). For information concerning FCC transcript costs, see Gellhorn, op. cit., 390-392.

[16]In Chicago Federation of Labor and Industrial Union Council (WCFL), the FCC said it was unsure of its authority to reimburse parties for bringing and accommodating witnesses, and felt that such authority should be ascertained in a proceeding of general applicability rather than the instant limited adjudicatory hearing. Nevertheless, the FCC left some hope for public intervenors; it said the Broadcast Bureau might absorb the costs for such witnesses if the Bureau also sought them for the purpose of compiling "a full and complete record." 49 FCC 2d 754, 755; 31 RR 2d 1520, 1522 (1974).

[17]Even if the money was available, it is possible that many experts might be reluctant to testify against the commercial interests which may employ their services on a more frequent basis. Gellhorn, op. cit., 393. This points up the necessity for the cultivation of adjunct research and expertise exclusively available to the public interest lawyers.

[18]"Letter from Herbert E. Forrest, Chairman, Federal Communications Bar Association Pro Bono Committee, to James McCuller, Chairman, National Black Media Coalition," Nov. 25, 1974. Noting that the FCBA proposal did not include provisions for the representation of indigent citizens groups appearing before the FCC, Charles Firestone of the Citizens Communications Center urged the FCC to consider the FCBA plan as the "proceeding of more general applicability" (supra, note 16) which could be used to determine the Commission's authority to grant financial assistance to citizens who are parties to FCC proceedings. "Letter from Charles Firestone, Citizens Communications Center, to Richard Wiley, Chairman, Federal Communications Commission," Nov. 27, 1974 (hereinafter "Firestone-Wiley Letter").

[19]"Proposed Legal Assistance Program for Public Intervenors," National Black Media Coalition, Washington, D.C., December 11, 1974.

[20]Citizens Communications Center has endorsed the concept of equal or approximately equivalent allocation between indigent private and public interest groups. "Firestone-Wiley letter."

The future of active public interest communications law rests largely on its ability to achieve permanent financial self-sufficiency. There will be no single panacea; rather, a number of mechanisms will be created and tested within various institutional frameworks of government. Although recent proposals have yet to receive acceptance, other alternatives will probably be developed and exposed to the scrutiny of many participants in broadcast regulation.

1974-75 Cable TV and Satellite Articles: A Selected Annotation

by Michael Angst

1. Regulating CATV: Local Government and The Franchising Process
SD L Rev 19:143 Winter '74

An outline of present FCC rules on CATV systems. The municipality as regulator is criticized as the article argues for state regulation.

2. Cable: The Thread By Which Television Competition Hangs (Author -- D. Bruce Pearson) Rutgers L Rev 27:800 Summer '74

Due to the 6th Report and Order, TV was destined for a "triopolistig" VHF broadcast structure (i.e., Limited Competition). The article outlines CATV history, growth and rules. The contention is that this structure violates anti-trust laws and that cable restrictions inhibit competition and therefore diversity.

3. Toward Community Ownership of Cable Television
Yale L Journal 83:1708 July 1974

A discussion of public access and local programming options inherent in the present cable rules. The study argues for community ownership to counter weaknesses which exist due to FCC rules; four models of community owernship are outlined. The study also urges the FCC to amend rules to give priority for community ownership v. MSO and conglomerate control.

4. Cable Television: To What Extent May the State Regulate? Author Richard Kohn
Lab Bulletin 49:513 October 1974

This article argues for state regulation in areas of franchise duration, franchise areas, interconnection, construction, channel capacity, fees, diversification of control, equal employment opportunities, subscriber rates, cablecasting, access, grandfathering and pay cable. All on the basis of "non-pre-emption."

5. Economics of the Cable Television "Consensus" by Stanley Besen
Journal of Law and Econ 17:39 April 1974

An outline of the FCC-OPI-Interested party consensus of November 1971 which was incorporated in the 1974 rules, i.e., exclusivity rules, leapfrogging rules. [Economically, systems in 51-100 have the highest potential for profitability, the price paid for exclusivity in top 50 by broadcasters.] Argument is that the "consensus" doesn't further "viewer satisfaction" but furthers economic interests of major market broadcasters. There are arguments against the commision's rationale for these rules and for localism which is limited by these rules.

6. The Fairness Doctrine and Cable TV
Harvard J of Legislation 11:629 June '74

Definition and history of the Fairness Doctrine. Cable's technology, history and future. It argues that the Fairness Doctrine was made a constitutional requirement due to scarcity of channels. However, future of cable with expanded channels will void the court's scarcity argument, therefore, the Fairness Doctrine will not be necessary in the future.

7. The OTP Cable Proposals: An End To Regulatory Myopia
Catholic U Law Rev 24:91 Fall 1974

Differentiates cable from broadcasting. [Economic support, area served, channel potential.] Argues that if cable is to be treated as is broadcasting the "Blue Sky" of cable may not become a reality. That is, FCC controls inhibit cable growth. History of FCC controls are described and access is signled out as an example of how complex FCC rules can retard rather than promote access because of two tier regulations, and other ambiguities. Advocates OTP proposals to separate cable from broadcasting.

8. Whose Intent? A Study of Administrative Preemption: State Regulation of Cable Television Case Western Reserve Law Review 25:258 Winter 1975

Thesis of the article is that this two stage model of preemption is the most pragmatic method of determining cable regulation. Cites numerous case laws which provide the basis for applicability of this model many of which are unrelated to cable or broadcasting.

9. The Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite: A Pot Shot At Poaching NYU Journal of International Law and Politics 7:575 Winter 1974

Provisions of the May 21, 1974, convention. The convention was unable to resolve the problem in part because of the lack of a large dimension of satellite use and lack of "significant facts and figures" of the piracy.

10. The Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite Bulletin of the Copyright Society of the USA 21:369 August 1974

As in article (9) above, the convention is first defined. Discusses the Lausanne, Paris, and Nairobi conventions preceding the Brussels (May 74) convention. The article centers on the provisions of the convention and as said above, its origins. Little analysis is added to the description of each provisio...

11. Direct Broadcast Satellites and Freedom of Speech
California Western Int Law Journal 4:374 Spring 1974

The article points out that direct broadcast satellites with the potential of coverage over certain territorial boundaries could be a problem. That is while we (USA) have a freedom of speech, international law does not support freedom of information. Propaganda is the forrnost concern of regulation of direct broadcast satellites. Direct broadcast satellites are being studied by the "Working Group" which has received two proposals for regulation:

(1) USSR Proposal - many prior restraints, and US Constitutional violations.

(2) Canada & Sweden - close to US 1st amendment rights; needs refinement.

The article is based on a need for regulation by international treaty. The author views both proposals as inadequate, however, feels regulation is necessary.

12. Copyright Law and CATV: CBS V TelePrompTer (476F2d338)
Va L Rev 60:137 Ja 74

Deals with the copyright suit of CBS, et. al. v TPT. Although importation was not found to be in violation of copyright in Fortnightly, CBS et. al. sued and lost in the District Court. They appealed in the Second Circuit and won on the matter of importing a distant signal since the receiving equipment of TPT was not "near" the community in question. That is, the "distant signal" here constituted copyright infringement (476 F2d 338) 1973 by the Court's definition the article (pre the reversal of 476 F2d 338) analyzes the confusion of CATV systems which were then under the auspecies of both FCC rules and 476 F2d 338. Also analyzed is the uncertainty raised as to the definition of a "distant signal" which varied in the court decisions. Argues for clerification of copyright liability by Congress in the matter of signal importation.

13. CATV and Copyright Liability: TelePrompTer v CBS Inc., and the Consensus Agreement Hastings L Journal 25:1507 May 1974

Copyright history is traced citing early case law for the Fortnightly decision. As in Article (12) the basis for holding "distant signals" as performance is analyzed. The article outlines the Supreme Court case of TelePrompTer where plaintifs asked for reversal on the functions of origination, sale of time, interconnection, etc., and the defendents asked reversal on the performance holding. [On 3/4/74 the Supreme Court held CATV not infringer on any of those functions, ie: 42 U.S.L.W. 4323 reversed (and partially affirmed) 476 F2d 338.] The remainder of the article analyzes the language and opinions of 42 U.S.L.W. 4323 [See also 94 Sup Ct. 1129] Presents pro and con arguments on claims of audience fragmentation and market destruction. The "consensus agreement" is argued as a solution to copyright problems provided it would be amended to include a "compensatory fee" for copyright holders. The "compensatory fee" is a creation by the author.

14. Overview of TelePrompTer vs CBS [94 SupCt 1129] And Other Recent Developments--Ominous Signals For The Copyright Law by Richard Dannay
Bulletin Copyright Soc of USA 22:10 October 74

An analysis of the Supreme Court TelePrompTer decision. Also the article is biased against the Fortnightly and TPT decisions and argues for S. 1361 (passed in September 74) which addresses itself to the factor rejected in the courts that cable systems should be liable for C.R. infringement. The bill holds minimal degrees of C.R. protection, much less than the author argues for.

15. Copyrights: The Cable TV Controversy
Okla Law Rev 27:39 Winter 1974

Another overview of the pre-Supreme Court decision for TPT. It praises FCC carriage rules and calls for legislation to clear up the copyright question. Thesis of the article is that the controversy leaves copyright uncertain for both CATV operator and the propriatary holder.

16. Cable, Copyright, Communications: Controversy
Cleveland State L Rev 24:107 Winter 1975

Defines cable, history and potential. Outlines cable regulation history including the OTP consensus and the lack of established fees to be paid to copyright holders. Then the article outlines the history and defines the copyright regulations. As in previous articles, it then outlines how past case law has been applied to cable including the resolution of the TelePrompTer case. The article analyzes the TPT case and as in article (16) criticizes the courts for failure to get involved in policy decisions. The article then outlines the history of recent copyright legislation including S1361 [Not yet passed at the time of the printing of this article] of which he calls for passage in the sake of public interest. A very straight forward article with a clear and coherent understanding of the history behind cable copyright conflicts.

P & F RADIO REGULATIONS MADE EASY

For many telecommunication law researchers and educators, the primary problem with instructions for use of Pike & Fischer Radio Regulations is that they are as the formula Medieval alchemists faced when attempting to create gold by transmutation--"First, take the horn of a unicorn ... "

In truth, there may be more unicorns than complete sets of Radio Regulations available in university libraries across the country. Even state supreme court or law school libraries, while likely to have the FCC Reports, will seldom invest in this expensive and specialized service. Yet, there may be reason to write to Pike & Fischer in Washington to locate the nearest subscriber and travel there if possible to conduct research, simply because of its unique breadth of coverage and ease of use.

This raises the second problem, for while Radio Regulations is quite logically arranged, attempting to discuss its reference techniques in the abstract is much like trying to learn to ski by reading a book. However, since there are certain general principles that should be useful if you can locate the series, here is at least a brief outline of those principles.

DIGESTS

The two sets of Digests in RR, the current Digest and Consolidated Digest for all materials in the First Series (prior to mid 1963) are the heart of the service.

Under each topic of law (assigned a distinct set of numbers by the service) are abstracts of all FCC and court decisions relating to that issue. In essence then, once the proper topic has been located, the digests provide an annotated bibliography of all materials relevant to it.

CURRENT SERVICE

The first volume (with one star) of the Current Service portion of RR contains an index with each topic or term used in the service followed by the number assigned that term. So, if you find the topic listed in the index, simply turn to that topic number in the Digest volume (remember to include Consolidated Digest as well if your research extends back beyond mid-1963) and you will find all relevant agency or court actions listed below.

Unfortunately, the RR terms may be as misleading as your Yellow Pages, listing your "Clear Channel" topic under "Allocations," or "License Challenge" under "Renewal."

In this case, another way to find the Digest term or topic number is to look for a citation of a case you know has considered the issue you're interested in, by using either a text (e.g., Kahn, Documents in American Broadcasting) or a law review article, such as those cited by topic in the past two issues of CLIENT.

Once you have the citation, turn to the proper conversion tables in the same first volume of Current Service (RR converts not only US Supreme Court, Court of Appeal and District Court decisions into volume and page numbers where the same decisions can be found in its Cases section, but also FCC Report, Federal Register and all other major sources of communication law materials).

Now that you have the case located in RR, by finding the Case volume cited and turning to the proper page, you'll find at the top of the case a listing of the issues in the case, and the RR topic number assigned to each issue.

All you have to do then is to note the RR number listed for the issue that brought you to the case, and you can go into the Digest with that same number to discover all the other cases in point.

While there are a number of other features that could be discussed here, including the complete annotation of the Communications Act of 1934 in the Current Service volumes, for example, this is probably enough (or perhaps too much) for those of you who have already mastered these techniques, and similarly, too much for those who don't have a chance to walk through this exercise immediately.

In summary then, RR is really three sets of books -- the Current Service, with index, conversion tables, Communication Act of 1934, treaty materials, forms, etc. -- the Digest which serves as the annotated bibliography for finding all other material pertaining to the same legal issue, and the Case volumes, which contain all these materials.

Good hunting, and if you have any specific research problems relating to the use of the series, pleaes let us know and we'll try to help.

Don R. Le Duc

Some controversy surrounds the discovery of the following CLIENT feature. Some say it was found on the back of a yellowing envelope in an old Pullman care derailed somewhere near Gettysburg, Pennsylvania--while others claim it was nailed to the door of the "Church of Your Choice" Synagogue in Long Beach, California. In any case, it seemed incisive and imaginative--so we hope you'll enjoy reading it and thinking about it--and reacting, either directly to us, or to Professor Elbow c/o CLIENT.

REGULACOMMENTARY: The Lady or the Tiger?

by Wriston Elbow
Institute of Broadcast Cynicism
Palo Aspen, Colophony

It may be that the days of the Fairness Doctrine are numbered. Its defenders are becoming fewer and weak. Its opponents are growing in number and, with the exception of Justice Douglas, strength. Jerome Barron's expansionist views have failed to pass muster in court. Fred Friendly and Chief Judge David Bazelon have shown that, paraphrasing Douglas, the Doctrine places the government camel's very ass on the tent of free expression. Accuracy In Media, groggy from years of litigation, seems to agree with the networks that broadcasters and the public would be better off without the Doctrine. While an FCC majority, the Office of Communication of the United Church of Christ, and the ACLU still favor retention of the Fairness Doctrine, its opponents include Commissioner Robinson, Nat Hentoff, and probably your local station manager. While Henry Geller suggests mere modification in the administration of the Doctrine, the Proxmire bill advocates total abolition of what used to be regarded as the civil libertarian cornerstone of broadcast regulation. The dissent of Frieda Hennock to the FCC's adoption of the Doctrine rings with a clarity that passed unperceived 26 years ago--the Doctrine is unenforceable.

The strange thing about the impending death of the Fairness Doctrine is that it really won't matter much. If the present policy "chills" broadcast expression, its removal will produce no thaw. We will continue to be exposed to a minimum of controversy, and the TV networks will remain content to pack their few evening public affairs series with soft documentary pieces on all-girl basketball teams, health spas, and Judy Garland. Walter, John, and Harry will still deliver their headline service, with a spot reserved for the oracular utterances of Eric, David, and Howard. None of the powerful media interests that are clamoring for Fairness Doctrine repeal will do much to exercise their new-found freedom once they have it, for their fortunes are so firmly

rooted in escapist fantasy that the distinctions once dividing entertainment from non-entertainment have all but disappeared. Perhaps the McIntires and Pacificas and America First types will open their mouths wider under a Doctrineless regime, but this is the subcellar of the broadcasting iceberg, and no waves will be made nor boats rocked. Has anyone ever seriously argued that ineffectual speech shouldn't be free, aside from the FCC?

What's needed is a new FCC policy, namely, an Unfairness Doctrine. This Doctrine would simply require broadcast licensees to treat controversial issues of public importance as unfairly as possible. It would force the broadcaster to become a partisan, even a propagandist. (Admittedly, most broadcasters already are advocates, but only on one issue--conspicuous consumption. At the very least the new Unfairness Doctrine would broaden the agenda.) The new policy, unlike the suggestions of the Committee for Economic Development and others, would avoid the trap of assuming that balance would arise from the divergence of thousands of licensees freely expressing their idiosyncratic and biased views; to hell with balance, and up with freedom! Any licensee who provided reasonable opportunity for opposition views to be heard would be in violation of the Unfairness Doctrine and would face the same sanctions now endured by those who run afoul of present policy. The personal attack rules of the FCC would be rescinded, although legal remedies for defamation administered by the States would remain in force.

What better present could the Commission and Congress give to the people on our nation's 200th birthday? And which policy would the broadcasters fight most?

LAST MINUTE NOTES

Alternate Media Center, 144 Bleecker Street, New York, New York 10012, will soon be publishing a supplement to their excellent Access Workbook including experiences with their internship program, further developments in two-way services and a new project in reading involving Senior Centers.

The Center will soon have sampler tapes available demonstrating several approaches to local origination.

For more information on this excellent service, write George C. Stoney at the above address.

Media Perspektiven (Dr. Marie-Luise Kiefer, Editor) 6 Frankfurt am Main-Federal Republic of Germany, is an excellent source for mass media information concerning West Germany. A top rate research journal for those who can read German. Contact the Editor at the above address for subscription information